

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

2019 MAR 29 PM 1:06

DUBLIN DIVISION

CLERK J. Hodge
SO. DIST. OF GA.

TORREY NEWELL,

Plaintiff,

v.

FULTON COUNTY SUPERIOR COURT
and GEORGIA DEPARTMENT
OF CORRECTIONS,

Defendants.

CV 319-022

ORDER

Plaintiff, incarcerated at Telfair State Prison in Helena, Georgia, filed the above-captioned case pursuant to 42 U.S.C. § 1983 and seeks to proceed *in forma pauperis*. When the Magistrate Judge reviewed Plaintiff's original complaint, it was unclear whether Plaintiff was attempting to assert a claim pursuant to 42 U.S.C. § 1983, or attempting to petition for habeas corpus relief. (See doc. no. 3.) Plaintiff complained his prison sentence had been improperly calculated, resulting in a prison sentence two-years longer than imposed. (See doc. no. 1.) As relief, Plaintiff requested both release from custody and \$1,500 per day he is held beyond what he believes to be his accurate release date. (*Id.* at 6.)

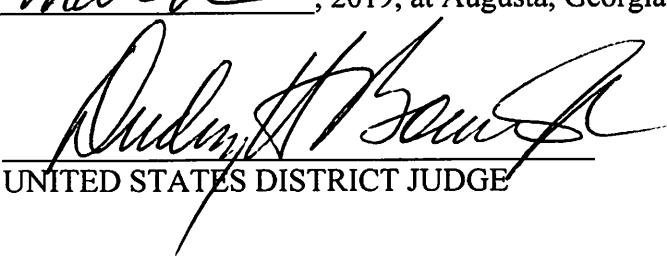
The Magistrate Judge explained Plaintiff may not proceed with a § 1983 claim for damages where success would necessarily imply the unlawfulness of the sentence, and Plaintiff must seek habeas corpus relief to challenge the fact or duration of his confinement. (Doc. no. 3 (citing Heck v. Humphrey, 512 U.S. 477, 487 (1994) and Wilkinson v. Dotson, 544 U.S. 74, 78 (2005).) The Magistrate Judge directed Plaintiff to notify the Court which

type of relief he sought, and the Clerk of Court provided Plaintiff with a form civil rights complaint used by incarcerated litigants in the Southern District of Georgia and a form habeas corpus petition.

In response, Plaintiff submitted an amended complaint and a habeas corpus petition. The Clerk of Court opened a new case for the habeas corpus petition. See Newell v. Brooks, CV 319-026 (S.D. Ga. Mar. 27, 2019). The amended complaint supersedes and replaces in its entirety the original complaint. See Hoefling v. City of Miami, 811 F.3d 1271, 1277 (11th Cir. 2016); Lowery v. Ala. Power Co., 483 F.3d 1184, 1219 (11th Cir. 2007) (“an amended complaint supersedes the initial complaint and becomes the operative pleading in the case”). The amended complaint names only Fulton County Superior Court and Georgia Department of Corrections as Defendants. (Doc. no. 7.) Therefore, the Court **DIRECTS** the **CLERK** to terminate Telfair State Prison and Fulton County as Defendants and add Fulton County Superior Court as a Defendant.

Because Plaintiff now names only Defendants located in Atlanta, Georgia, the proper venue is the United States District Court for Northern District of Georgia. 28 U.S.C. § 1391(b). In the interest of justice, instead of dismissing this action, the Court **ORDERS** it **TRANSFERRED** to the Northern District of Georgia. 28 U.S.C. § 1406(a). The Court also **DIRECTS** the Clerk to immediately forward the file to that District.

SO ORDERED this 29th day of March, 2019, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE